IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Vijay Vaidyanathan et al.

Examiner: Bradley B. Bayat

Serial No. 10/082,884

Art Unit: 3621

Filed: 02/26/2002

For: **METHOD AND SYSTEM FOR AUTOMATICALLY DISTRIBUTING FEES, INCLUDING A RESELLER COMMISSION, DURING A DIGITAL FILE TRANSACTION**

Mail Stop Appeal Brief – Patents
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

   The present **REVISED APPEAL BRIEF** is filed pursuant to 37 C.F.R. § 41.37(c)(1)(v) to address the Notification of Non-Compliant Appeal Brief mailed August 17, 2006 by amending section (5) SUMMARY OF CLAIMED SUBJECT MATTER . Appellant has previously paid for the Appeal Brief, so no new fee should be required. If any additional fees are required in association with this appeal brief, the Director is hereby authorized to charge them to Deposit Account 50-1732, and consider this a petition therefor.

(1) REAL PARTY IN INTEREST

The present application is owned by Qurio Holdings, Inc. with a principal place of business at 1130 Situs Court, Suite 216, Raleigh, North Carolina 27606.

(2) RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences to the best of Appellant's knowledge.

(3) STATUS OF CLAIMS

Claims 1-42 were rejected with the rejection made final on February 28, 2006.

Claims 1-42 are pending and the subject of this appeal.

(4) STATUS OF AMENDMENTS

All amendments have been entered to the best of Appellant's knowledge.

(5) SUMMARY OF CLAIMED SUBJECT MATTER

The present invention is a method and system for enabling electronic delivery of files. The digital marketplace of the present invention enables transactions between content owners, consumers, and resellers, where payment for the files is automatically collected and distributed to all the relevant parties.

Independent claim 1 recites a method for enabling electronic delivery of files in a digital marketplace (Figure 1, digital files 12), the method comprising the steps of:

(a) maintaining a data repository (such as Figure 3, file authority 76) for storing information relating to the files available in the digital marketplace (Figure 1, Element 10), including business rules (Figure 3, Element 88) associated with each file that define electronic transfer of the files during commercial transactions (Specification, p. 4, lines 2-6, p. 11, lines 16-21);

(b) in response to a first user requesting to resell a particular file and thereby becoming a reseller (Figure 1, reseller 15; Figure 4B, steps 128, 138; Specification, p. 5, lines 17-18, p. 14, lines 14-16, p. 16, lines 8-22), using the data repository to dynamically generate a reseller

uniform resource locator (RURL) that uniquely identifies the reseller and the file (Specification, p. 4, lines 6-9, p. 17, lines 1-8; Figure 4B, step 140);

(c) providing the RURL to the reseller for posting on a website in order to make the file commercially available to others on the website (Specification, p. 4, lines 9-11, p. 17, lines 10-14; Figure 4B, step 142); and

(d) in response to a second user clicking on a link to download the file (Specification, p. 4, lines 11-15), retrieving from the data repository the business rules associated with the file identified in the RURL to customize the download of the file to the second user (Specification, p. 17, lines 16-20; Figure 4B, steps 144 and 146) and to automatically distribute payments to the reseller and owner of the file (Specification, p. 4, lines 11-15, p. 17, line 22 through p. 18, line 16, p. 15, lines 15-20; Figure 4A, steps 120 and 122).

Claim 15 is similar to claim 1, albeit in a computer-readable medium format, the computer-readable medium containing program instructions for enabling electronic delivery of files, where the instructions are for carrying out the method of claim 1. In particular, the computer-readable medium of Claim 15 contains instructions for:

(a) maintaining a data repository (such as Figure 3, file authority 76) for storing information relating to the files available in a digital marketplace (Figure 1, Element 10), including business rules (Figure 3, Element 88) associated with each file that define electronic transfer of the files during commercial transactions (Specification, p. 4, lines 2-6, p. 11, lines 16-21);

(b) in response to a first user requesting to resell a particular file and thereby becoming a reseller (Figure 1, reseller 15; Figure 4B, steps 128, 138; Specification, p. 5, lines 17-18, p. 14, lines 14-16, p. 16, lines 8-22), using the data repository to dynamically generate a reseller uniform resource locator (RURL) that uniquely identifies the reseller and the file (Specification, p. 4, lines 6-9, p. 17, lines 1-8; Figure 4B, step 140);

(c) providing the RURL to the reseller for posting on a website in order to make the file commercially available to others on the website (Specification, p. 4, lines 9-11, p. 17, lines 10-14; Figure 4B, step 142); and

(d) in response to a second user clicking on a link to download the file (Specification, p. 4, lines 11-15), retrieving from the data repository the business rules associated with the file identified in the RURL to customize the download of the file to the second user (Specification, p.

17, lines 16-20; Figure 4B, steps 144 and 146) and to automatically distribute payment to the reseller and owner of the file (Specification, p. 4, lines 11-15, p. 17, line 22 through p. 18, line 16, p. 15, lines 15-20; Figure 4A, steps 120 and 122).

Claim 29 recites a system for enabling electronic delivery of files over a network comprising a plurality of client computers, comprising:

a digital marketplace (Figure 1, Element 10) including a server (such as Figure 3, server 69) coupled to the network;

a data repository (Figure 3, file authority 76) accessible by the server for storing information relating to the files available in the digital marketplace (Figure 3, digital files 12), wherein the information includes business rules (Figure 3, Element 88) associated with each file that define electronic transfer of the files during commercial transactions (Specification, p. 4, lines 2-6, p. 11, lines 16-21);

wherein in response to a first user (Figure 3, user 74) contacting the server and requesting to resell a particular file and thereby becoming a reseller (Figure 1, reseller 15; Specification, p. 5, lines 17-18, p. 14, lines 14-16, p. 16, lines 8-22), the server:

uses the data repository to dynamically generate a reseller uniform resource locator (RURL) that uniquely identifies the reseller and the file (Specification, p. 4, lines 6-9, p. 17, lines 1-8; Figure 4B, step 140), and

provides the RURL to the reseller for posting on a website in order to make the file commercially available to others on the website (Specification, p. 4, lines 9-11, p. 17, lines 10-14; Figure 4B, step 142); and

in response to a second user clicking on a link to download the file (Specification, p. 4, lines 11-15), the server retrieves from the data repository the business rules associated with the file identified in the RURL to customize the download of the file to the second user (Specification, p. 17, lines 16-20; Figure 4B, steps 144 and 146) and automatically distributes payments to the reseller and owner of the file (Specification, p. 4, lines 11-15, p. 15, lines 15-20, p. 17, line 22 through p. 18, line 16; Figure 4A, steps 120 and 122).

Appellant contends that certain dependent claims are separately patentable.

Claims 4, 18, and 32 recite the limitation of providing each record with a file ID (Figure 3, uniform resource indicator (URI) 78), a file name, a content owner ID, metafile information, a fingerprint, and the business rules (Figure 3, record 77; file name 80; content owner ID 82; file

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metadata 84; fingerprint 86 is comprised of bitstream ID 90 and digital signature 92; business rules 88; see also Specification, p. 12, line 10 through p. 13, line 12).

Claims 5, 19, and 33 depend from claims 4, 18, and 32, respectively, and add the further limitation of providing the business rules with a redistributable indicator that indicates whether the file is redistributable (Figure 3, redistributable indicator 94; Specification, p. 13, line 19 through p. 14, line 9).

Claims 6, 20, and 34 depend from claims 4, 18, and 32, respectively, and add the further limitation of using the fingerprint to uniquely identify each file by content of the file (Specification, p. 12, line 21 through p. 13, line 1).

(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A. Whether claims 1-42 were properly rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2003/0023687 A1 to Wolfe (hereinafter "Wolfe") in view of Gervais, "Electronic Rights Management and Digital Identifier Systems," March 1999, The Journal of Electronic Publishing, vol. 4, issue 3, pp. 1-25 (hereinafter "Gervais").

(7) ARGUMENT

A. Introduction

The Patent Office has not shown where all the elements of the claims are shown with sufficient particularity to sustain an obviousness rejection. Specific elements of claim 1 are not taught or suggested by Wolfe, Gervais, or the combination thereof. The claimed invention is directed to the reselling of files, not generating income through referred sales of items, as taught by Wolfe. In particular, Wolfe does not teach the following elements of claim 1: "maintaining a data repository for storing information relating to the files available in the digital marketplace" and "in response to a first user requesting to resell a particular file and thereby becoming a reseller, using the data repository to dynamically generate a reseller uniform resource locator (RURL) that uniquely identifies the reseller and the file. . . ." In fact, the Patent Office has proven Appellant's point that Wolfe is specifically directed to generating a commission link, and not to reselling particular files available in the digital marketplace. In addition, Gervais does not teach or suggest business rules to automatically distribute payments to the reseller and owner of

the file. Since the Examiner has not shown where each and every element is taught or suggested in the combined references, obviousness has not been established. As such, Appellant requests that the Board reverse the Examiner and instruct the Examiner to allow the claims.

B. Summary of the References

1. U.S. Patent Application Publication No. 2003/0023687 A1 to Wolfe

Wolfe is directed to an electronic commerce system for generating a commission link. The system includes an affiliate host system for presenting a user with a link to a first location having a corresponded coded link to a second location, receiving an input based on the selected link, connecting the user to the second location, connecting the user to the first location after a selected period at the second location, and receiving a commission based on connecting the user to the second location (Wolfe, paragraph 0006). Wolfe teaches an affiliate program wherein an affiliate earns commissions for referring customers to a merchant site. The customer purchases directly from the merchant web site and the affiliate gets the commission (Wolfe, paragraph 0016). Wolfe teaches items for sale in an electronic environment, but does not disclose reselling files. Wolfe discusses the relationship between the affiliate and the website, indicating that the affiliate retains control over the customer's browser (Wolfe, paragraph 0027).

2. Gervais, "Electronic Rights Management and Digital Identifier Systems"

Gervais is an article from the Journal of Electronic Publishing that discusses electronic rights management and digital identifier systems. The article addresses how to build a electronic infrastructure that works with copyrights and takes advantage of the digital environment. In particular, the article addresses how to build an electronic copyright-management system. The Patent Office has stated that Gervais was merely introduced to allegedly demonstrate automatic disbursement to all interested parties. In particular, Gervais discloses that a digital content owner could receive with the payment for use of his works a report on the number of uses of the works from an aggregator of data or a collective management organization using an electronic copyright-management system (Gervais, p. 19). Gervais also discusses that an electronic copyright-management system should allow users to access material in such a way that they know what is for sale, but full access would require payment. *Id.*

C. The Standards for Establishing Obviousness

Section 103(a) of the Patent Act provides the statutory basis for an obviousness rejection and reads as follows:

> A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Courts have interpreted 35 U.S.C. § 103(a) as being a question of law based on underlying facts. As the Federal Circuit stated:

> Obviousness is ultimately a determination of law based on underlying determinations of fact. These underlying factual determinations include: (1) the scope and content of the prior art; (2) the level of ordinary skill in the art; (3) the differences between the claimed invention and the prior art; and (4) the extent of any proffered objective indicia of nonobviousness.

Monarch Knitting Mach. Corp. v. Sulzer Morat GmBH, 139 F.3d 877, 881 (Fed. Cir. 1998) (internal citations omitted).

The burden is on the Patent Office to establish a *prima facie* case of obviousness. *In re Fine*, 837 F.3d 1071, 1074 (Fed. Cir. 1988). "To reach a proper conclusion under § 103, the decisionmaker must step backward in time and into the shoes worn by [a person having ordinary skill in the art] when the invention was unknown and just before it was made." *Id.* at 1073 (quoting *Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561, 1566 (Fed. Cir. 1987) (paraphrase in *Fine*'s original text)). "One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." *In re Fine* at 1075.

The "case law makes clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references." *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999). "Combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability - the essence of hindsight." *Ibid.*

The Federal Circuit notes

> that evidence of a suggestion, teaching, or motivation to combine may flow from the prior art references themselves, the knowledge of one of ordinary skill in the

art, or, in some cases, from the nature of the problem to be solves . . . The range of sources available, however, does not diminish the requirement for actual evidence. That is, the showing must be clear and particular. Broad conclusory statements regarding the teaching of multiple references, standing alone, are not "evidence."

Ibid (internal citations omitted). It is worth noting that the *Dembiczak* court specifically acknowledged *Fine*, but emphasized the requirement for actual evidence in proving the motivation to combine the references.

It is further worth noting that where the teachings of two or more prior art references conflict, the examiner must weigh the power of each reference to suggest solutions to one of ordinary skill in the art, considering the degree to which one reference might accurately discredit another. *In re Young*, 927 F.2d 588 (Fed. Cir. 1991); MPEP § 2143.01.

For a *prima facie* case of obviousness, the combination must teach or fairly suggest all the claim elements. *In re Royka*, 490 F.2d 981 (CCPA 1974); MPEP § 2143.03. When determining whether the references or combination of references teaches an element, the Patent Office is entitled to interpret the claim elements broadly. However, this interpretation is limited in several respects. First, the interpretation is made in light of the specification. Further, the interpretation must be reasonable to someone skilled in the art. MPEP § 2111.

If the Patent Office fails to establish obviousness, then the applicant is entitled to a patent. *In re Glaug*, 283 F.3d 1335, 1338 (Fed. Cir. 2002).

D. Claims 1-42 Are Non-Obvious Because The Combination of Wolfe and Gervais Does Not Disclose Each and Every Element of the Claimed Invention

1. The Combination of Wolfe and Gervais Does Not Teach or Suggest Each Element of the Independent Claims

Claims 1-42 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Wolfe in view of Gervais. For the Patent Office to establish *prima facie* obviousness, the Patent Office must show where each and every claim element can be found in the combination of references. MPEP § 2143.03. When determining whether the references or combination of references teaches an element, the Patent Office is entitled to interpret the claim elements broadly. However, this interpretation is limited in several respects. First, the interpretation is made in light of the specification. Further, the interpretation must be reasonable to someone skilled in the art. MPEP § 2111.

The claimed invention is directed to the reselling of files, not generating income through referred sales of items, as taught by Wolfe. In particular, Wolfe does not teach the following elements of claim 1: "maintaining a data repository for storing information relating to the files available in the digital marketplace" and "in response to a first user requesting to resell a particular file and thereby becoming a reseller, using the data repository to dynamically generate a reseller uniform resource locator (RURL) that uniquely identifies the reseller and the file. . . ."

Claim 1 specifically recites "maintaining a data repository for storing information relating to the files available in the digital marketplace." Appellant has studied Wolfe and finds no teaching wherein the files are available for sale, as indicated in claim 1. In the Final Office Action, the Patent Office responds that "Wolfe is directed to electronic commerce transactions and more specifically to a system, method, and storage medium for generating a commission link. Wolfe does not limit the invention to merely reselling files, but rather to any items for sale in an electronic environment" (Final Office Action mailed February 28, 2006, p. 2)[1]. The Examiner has proven Appellant's point that Wolfe is specifically directed to generating a commission link, and not to reselling particular files available in the digital marketplace. Wolfe teaches items for sale in an electronic environment, but does not disclose **reselling files**. Although Wolfe may teach items for sale, it does not describe the **reselling of files**, as claimed in claim 1. Therefore, Wolfe does not teach or suggest each and every element of claim 1. Gervais does not cure the deficiencies of Wolfe (see footnote 1). Thus, claim 1 is patentable over Wolfe and Gervais.

Claim 1 further recites "in response to a first user requesting to resell a particular file and thereby becoming a reseller, using the data repository to dynamically generate a reseller uniform resource locator (RURL) that uniquely identifies the reseller and the file. . . ." Thus, the claim requires that a first user requests to resell a particular file and thereby becomes a reseller, and that the data repository is used to dynamically generate a RURL that uniquely identifies the reseller and the file. In contrast, Wolfe teaches an affiliate program wherein an affiliate earns commissions for referring customers to a merchant site. The customer purchases directly from the merchant web site and the affiliate gets the commission (Wolfe, Abstract; paragraph 0016). At no time is the affiliate ever a reseller as that term is used in the Specification. Certainly no

[1] The Examiner admits that Gervais was introduced merely for the assertion that it demonstrated automatic disbursement to all interested parties. Therefore, Gervais does not teach a reseller or the reselling of files.

one of ordinary skill in the art would consider an affiliate who does not sell any product to be a reseller. The Patent Office cites to Wolfe, col. 15, lines 20-25, at page 8, paragraph 0080 as allegedly teaching the limitation of "in response to a first user requesting to resell a particular file and thereby becoming a reseller, using the data repository to dynamically generate a reseller uniform resource locator (RURL) that uniquely identifies the reseller and the file. . ." (Office Action mailed September 19, 2005, p. 5). The cited passage discusses the relationship between the affiliate and the website, indicating that the affiliate retains control over the customer's browser. The passage confirms that the user performs an action on the merchant site 40, effectively proving that the affiliate is not the entity from whom the customer makes the purchase (and thus precluding the affiliate from being the reseller of the claim).

The Patent Office responds in the Final Office Action by initially stating that "[a]lthough the applicant may be referring to a link as a reseller URL, Wolfe teaches the same mechanism in tracking and collecting commission and sales revenue as recited in the claimed invention. Furthermore, applicant's distinction between a frame controlled by a merchant or not is irrelevant as to the in (sic) both the invention and Wolfe a link is generated to accomplish the stated provisions" (Final Office Action mailed February 28, 2006, p. 2). Secondly, the Examiner cites paragraph 0027 of Wolfe (Final Office Action mailed February 28, 2006, p. 3). Finally, the Examiner cites Wolfe, paragraph 0044 as teaching that the most basic complication is that many merchants do not offer their affiliates the opportunity to link to individual products, and therefore, Wolfe's affiliate can be both affiliate and reseller (Final Office Action mailed February 28, 2006, p. 3).

The Patent Office seems to be missing Appellant's point. None of the cited passages of Wolfe teach the recited element "in response to a first user requesting to resell a particular file and thereby becoming a reseller." Wolfe simply does not disclose a first user requesting to resell a particular file and thereby becoming a reseller. Nor does Wolfe teach that in response to the user requesting to resell a particular file, the data repository is used to dynamically generate a reseller uniform resource locator (RURL) that uniquely identifies the reseller and the file. Even if Wolfe teaches the same mechanism for tracking and collecting commission and sales revenue, a point Appellant does not concede, it does not teach the specific limitations of the claim. The Patent Office seems to be ignoring the specific language of the claim, which requires "in response to a first user requesting to resell a particular file and thereby becoming a reseller, using

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the data repository to dynamically generate a reseller uniform resource locator (RURL) that uniquely identifies the reseller and the file."

Paragraph 0027 of Wolfe discusses how, when the consumer is linked to the affiliate's web site, a tracking process may be triggered, and when the affiliate web server redirects the consumer to the merchant web site, the merchant web site continues the tracking process and reports sales and commissions back to the affiliate network. After redirection, the URL displayed in the consumer's browser corresponds to the merchant web site so that in most cases, the consumer is unaware that he or she was first directed to the affiliate web site. While the consumer may not be aware that he or she has been redirected to the merchant web site, and the merchant web site may track sales and commissions, this paragraph still does not teach a "first user requesting to resell a particular file and thereby becoming a reseller." In addition, the URL displayed is that of the merchant, and is therefore not a RURL that uniquely identifies the reseller and the file, as required by claim 1.

Finally, the Patent Office's cite to paragraph 0044 of Wolfe as allegedly supporting the theory that Wolfe's affiliate can be both affiliate and reseller does not support the alleged theory. The fact that Wolfe may disclose that many merchants do not offer their affiliates the opportunity to link to individual products does not mean the affiliate is a reseller. Moreover, there is nothing in paragraph 0044 or the rest of Wolfe that teaches a "first user requesting to resell a particular file and thereby becoming a reseller." The affiliate of Wolfe does not request to resell a particular file and thereby becomes a reseller. Moreover, as discussed above, since the URL displayed is that of the merchant and not the affiliate, Wolfe does not teach using the data repository to dynamically generate a reseller uniform resource locator (RURL) that uniquely identifies the reseller and the file, as required by claim 1. Therefore, Wolfe does not teach this claim element.

The combination of Wolfe and Gervais fails to teach an additional element of the independent claims. The independent claims 1, 15, and 29 all recite in step (d) "retrieving from the data repository the business rules associated with the file identified in the RURL to customize the download of the file to the second user and to automatically distribute payments to the reseller and owner of the file." The Patent Office admits that Wolfe does not teach automatically distributing payment to the owner of the file, but cites to Gervais as allegedly teaching this limitation (Final Office Action mailed February 28, 2006, p. 5). In particular, the

Patent Office states that Gervais at pp. 18-20 teaches an electronic rights management and digital identifier system where payment can be distributed automatically to content owners through links either directly or through an aggregator of data or third party. *Id.*

Appellant respectfully submits that Gervais does not teach or suggest any method to "**automatically** distribute payments to the reseller and owner of the file." The cited passages of Gervias at best disclose that a digital content owner could receive with the payment for use of his works a report on the number of uses of the works from an aggregator of data or a collective management organization using an electronic copyright-management system (Gervais, p. 19). Gervais also discusses that an electronic copyright-management system should allow users to access material in such a way they know what is for sale, but full access would require payment. *Id.* Geravis therefore merely teaches that a user should have to pay for copyrighted digital content and that the owner should receive payment, optionally together with some information about the uses of the content. However, such payment is not automatically distributed, nor is it accomplished by retrieving from a data repository business rules associated with the file identified in the RURL. Thus, Gervais does not teach or suggest "retrieving from the data repository the business rules associated with the file identified in the RURL to customize the download of the file to the second user and to **automatically** distribute payments to the reseller and owner of the file." Since Gervais does not teach or suggest the limitation, the combination does not teach or suggest the claim limitation. Therefore, the independent claims are patentable for this additional reason.

As set forth above, Wolfe does not teach or suggest each and every element of claim 1. Nothing in Gervais cures the deficiencies of Wolfe. Since the references individually do not teach or suggest the claim elements, the combination of references cannot teach or suggest the claim elements. Since the combination does not teach or suggest the claim elements, the combination does not establish obviousness, and the claim is allowable for this reason.

Claims 2-14 depend from claim 1 and are not obvious for at least the same reasons.

Claim 15 is substantially similar to claim 1, albeit in a computer software format. Thus, claim 15 is not obvious for at least the same reasons.

Claims 16-28 depend from claim 15 and are not obvious for at least the same reasons.

Claim 29 recites, in relevant part, essentially the same elements as claim 1. That is, claim 29 recites "a data repository accessible by the server for storing information relating to the files

available in the digital marketplace. . .”; “a first user contacting the server and requesting to resell a particular file and thereby becoming a reseller. . .”; and “uses the data repository to dynamically generate a reseller uniform resource locator (RURL) that uniquely identifies the reseller and the file. . . .” These correspond to the elements addressed above. As explained above, Wolfe and Gervais do not teach or suggest these elements, and therefore claim 29 is not obvious. Claims 30-42 depend from claim 29 and are not obvious for at least the same reasons.

2. The Combination of Wolfe and Gervais Does Not Teach or Suggest Each Element of the Dependent Claims 4-6, 18-20, and 32-34

Some dependent claims deserve special mention. Claims 4, 18, and 32 recite the limitation of providing each record with a file ID, a file name, a content owner ID, metafile information, a fingerprint, and the business rules. The Patent Office states that paragraphs 0043, 0074-0077, 0085, and 0086 of Wolfe discloses these elements (Final Office Action mailed February 28, 2006, p. 6). Appellant has reviewed these passages and does not find a teaching of providing each record with all of the claimed information. The closest Appellant finds is the teaching of an affiliate identity code. This teaching of Wolfe is not equivalent to providing each record with a file ID, a file name, a content owner ID, metafile information, a fingerprint, and the business rules. Nothing in Gervais cures the deficiencies of Wolfe. Since the references individually do not teach or suggest the claim element, the combination of references cannot teach or suggest the claim element, and the claims are non-obvious. Since the claims are non-obvious, claims 4, 18, and 32 are independently patentable over the rejection of record.

Claims 6, 20, and 34 depend from claims 4, 18, and 32, respectively, and add the further limitation that the fingerprint is used to uniquely identify each file by content of the file. The Patent Office states that paragraphs 0052-0062 of Wolfe disclose this element (Final Office Action mailed February 28, 2006, p. 6). The fingerprint of the present invention is comprised of bitstream ID 90 and digital signature 92 (Specification, p. 12, line 21 through p. 13, line 12). The affiliate identity code, merchant identifer and product identifier of Wolfe discussed in paragraphs 0052-0062 are not a fingerprint that is used to uniquely identify each file by content of the file. Nothing in Gervais cures the deficiencies of Wolfe. Since the references individually do not teach or suggest the claim element, the combination of references cannot

teach or suggest the claim element, and the claims are non-obvious. Since the claims are non-obvious, claims 6, 20, and 34 are independently patentable over the rejection of record.

Claims 5, 19, and 33 recite that the rules have a redistributable indicator that indicates whether the file is redistributable. The Patent Office asserts that this is shown by Wolfe, paragraph 0027 (Final Office Action mailed February 28, 2006, p. 6). Paragraph 0027 does describe the process of linking to the affiliate network, but there is nothing in the passage that indicates the file is redistributable. Redirection is not the same as redistribution. Appellant therefore submits that the Patent Office has failed to show that Wolfe discloses the redistributable indicator of claims 5, 19, and 33. Nothing in Gervais cures the deficiencies of Wolfe. Since the references individually do not teach or suggest the claim elements, the combination of references cannot teach or suggest the claim elements, and the claims are non-obvious. Since the claims are non-obvious, claims 5, 19, and 33 are independently patentable over the rejection of record.

E. Conclusion

The Patent Office has not shown where all the elements of the claims are shown with sufficient particularity to sustain an obviousness rejection. Specific elements of claim 1 are not taught or suggested by Wolfe, Gervais, or the combination thereof. The claimed invention is directed to the reselling of files, not generating income through referred sales of items, as taught by Wolfe. In addition, Gervais does not teach or suggest business rules to automatically distribute payments to the reseller and owner of the file. Since the Examiner has not shown where each and every element is taught or suggested in the combined references, obviousness has not been established. As such, Appellant requests that the Board reverse the Examiner and instruct the Examiner to allow the claims.

Respectfully submitted,

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(8) APPENDIX

1. A method for enabling electronic delivery of files in a digital marketplace, the method comprising the steps of:

      (a) maintaining a data repository for storing information relating to the files available in the digital marketplace, including business rules associated with each file that define electronic transfer of the files during commercial transactions;

      (b) in response to a first user requesting to resell a particular file and thereby becoming a reseller, using the data repository to dynamically generate a reseller uniform resource locator (RURL) that uniquely identifies the reseller and the file;

      (c) providing the RURL to the reseller for posting on a website in order to make the file commercially available to others on the website; and

      (d) in response to a second user clicking on a link to download the file, retrieving from the data repository the business rules associated with the file identified in the RURL to customize the download of the file to the second user and to automatically distribute payments to the reseller and owner of the file.

2. The method of claim 1 wherein step (a) further includes the step of: providing within the business rules a pricing model associated with the file.

3. The method of claim 2 wherein step (a) further includes the step of: storing a record for each file that includes fields for identifying a location of the file and the owner of the file.

4. The method of claim 3 wherein step (a) further includes the step of: providing each record with a file ID, a file name, a content owner ID, metafile information, a fingerprint, and the business rules.

5. The method of claim 4 wherein step (a) further includes the step of: providing the business rules with a redistributable indicator that indicates whether the file is redistributable.

6. The method of claim 4 wherein step (a) further includes the step of: using the fingerprint to uniquely identify each file by content of the file.

7. The method of claim 6 wherein step (a) further includes the step of: generating a bitstream ID by calculating binary values in data blocks of the file.

8. The method of claim 2 wherein step (d) further includes the step of:
   (i) charging the second user a retail price for downloading the file.

9. The method of claim 8 wherein step (a) further includes the step of:
   (i) allowing a content owner to set the retail price and a reseller commission both positively and negatively.

10. The method of claim 2 wherein step (b) further includes the step of:
    (i) providing the RURL with a web address of the marketplace, the file ID, and the user ID of the reseller.

11. The method of claim 10 wherein step (b) further includes the step of:
    (i) providing the RURL by displaying the RURL and allowing the reseller to copy and paste the RURL on the website.

12. The method of claim 10 wherein step (b) further includes the step of:
    (i) providing the RURL via email.

13. The method of claim 1 further including the step of: implementing the digital marketplace as a website on a network.

14. The method of claim 1 further including the step of: implementing the digital marketplace as a peer-to-peer network.

15. A computer-readable medium containing program instructions for enabling electronic delivery of files, the instructions for:

(a) maintaining a data repository for storing information relating to the files available in a digital marketplace, including business rules associated with each file that define electronic transfer of the files during commercial transactions;

(b) in response to a first user requesting to resell a particular file and thereby becoming a reseller, using the data repository to dynamically generate a reseller uniform resource locator (RURL) that uniquely identifies the reseller and the file;

(c) providing the RURL to the reseller for posting on a website in order to make the file commercially available to others on the website; and

(d) in response to a second user clicking on a link to download the file, retrieving from the data repository the business rules associated with the file identified in the RURL to customize the download of the file to the second user and to automatically distribute payment to the reseller and owner of the file.

16. The computer-readable medium of claim 15 wherein instruction (a) further includes the instruction of: providing within the business rules a pricing model associated with the file.

17. The computer-readable medium of claim 16 wherein instruction (a) further includes the instruction of: storing a record for each file that includes fields for identifying a location of the file and the owner of the file.

18. The computer-readable medium of claim 17 wherein instruction (a) further includes the instruction of: providing each record with a file ID, a file name, a content owner ID, metafile information, a fingerprint, and the businesses rules.

19. The computer-readable medium of claim 18 wherein instruction (a) further includes the instruction of: providing the business rules with a redistributable indicator that indicates whether the file is redistributable.

20. The computer-readable medium of claim 18 wherein instruction (a) further includes the instruction of: using the fingerprint to uniquely identify each file by content of the file.

21. The computer-readable medium of claim 20 wherein instruction (a) further includes the instruction of: generating a bitstream ID by calculating binary values in data blocks of the file.

22. The computer-readable medium of claim 16 wherein instruction (d) further includes the instruction of:

(i) charging the second user a retail price for downloading the file.

23. The computer-readable medium of claim 22 wherein instruction (a) further includes the instruction of:

(i) allowing a content owner to set the retail price and a reseller commission both positively and negatively.

24. The computer-readable medium of claim 16 wherein instruction (b) further includes the instruction of:

(i) providing the RURL with a web address of the marketplace, a file ID, and a user ID of the reseller.

25. The computer-readable medium of claim 24 wherein instruction (b) further includes the instruction of:

(i) providing the RURL by displaying the RURL and allowing the reseller to copy and paste the RURL on the website.

26. The computer-readable medium of claim 24 wherein instruction (b) further includes the instruction of:

(i) providing the RURL via email.

27. The computer-readable medium of claim 15 further including the instruction of: implementing the digital marketplace as a website on a network.

28. The computer-readable medium of claim 15 further including the instruction of: implementing the digital marketplace as a peer-to-peer network.

29. A system for enabling electronic delivery of files over a network comprising a plurality of client computers, comprising:

 a digital marketplace including a server coupled to the network;

 a data repository accessible by the server for storing information relating to the files available in the digital marketplace, wherein the information includes business rules associated with each file that define electronic transfer of the files during commercial transactions;

 wherein in response to a first user contacting the server and requesting to resell a particular file and thereby becoming a reseller, the server:

  uses the data repository to dynamically generate a reseller uniform resource locator (RURL) that uniquely identifies the reseller and the file, and

  provides the RURL to the reseller for posting on a website in order to make the file commercially available to others on the website; and

  in response to a second user clicking on a link to download the file, the server retrieves from the data repository the business rules associated with the file identified in the RURL to customize the download of the file to the second user and automatically distributes payments to the reseller and owner of the file.

30. The system of claim 29 wherein the business rules include a pricing model associated with the file.

31. The system of claim 30 wherein the data repository includes a record for each file that includes fields for identifying a location of the file and the owner of the file.

32. The system of claim 31 wherein each record includes a file ID, a file name, a content owner ID, metafile information, a fingerprint, and the businesses rules.

33. The system of claim 32 wherein the business rules further include a redistributable indicator that indicates whether the file is redistributable.

34. The system of claim 32 wherein the fingerprint uniquely identifies each file by the content of

the file.

35. The system of claim 34 wherein the fingerprint includes a bitstream ID, which is generated by calculating binary values in data blocks of the file.

36. The system of claim 30 wherein the second user is charged the retail price for downloading the file.

37. The system of claim 36 wherein the content owner can set a retail price and a reseller commission both positively and negatively.

38. The system of claim 30 wherein the RURL includes a web address of the marketplace, a file ID, and a user ID of the reseller.

39. The system of claim 38 wherein the RURL is provided by displaying the RURL and allowing the reseller to copy and paste the RURL on the website.

40. The system of claim 38 wherein the RURL is provided via email.

41. The system of claim 29 wherein the digital marketplace is implemented as a website on a network.

42. The system of claim 29 wherein the digital marketplace is implemented as a peer-to-peer network.

(9) EVIDENCE APPENDIX

Appellant relies on no evidence, thus this appendix is not applicable.

(10) RELATED PROCEEDINGS APPENDIX

As there are no related proceedings, this appendix is not applicable.